IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7755 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDSHAH BHIKHUSHAH DIWAN

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR.K.M. PARIKH A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/06/2001

ORAL JUDGEMENT

1. The application has been filed for quashing and setting aside the judgment and order passed by the respondent No.2, Collector, Himmatnagar and respondent No.1 State of Gujarat, respectively, dated April 26, 1991

and February 8, 1993, holding the same as illegal, null and void and abinitio, unconstitutional contrary to the provisions of Essential Commodities Act, 1955 and the Order of 1981.

2. The petitioner was the owner of the tanker No.G.R.R. 3439. He purchased the tanker through bank loan for the purpose of transportation on hire. The petitioner employed one Mr.Himmatkhan Murshid Khan as driver for the tanker on monthly remuneration basis. The petitioner fell ill and was admitted in the hospital of Dr.Ajay H. Patel, at Ahmedabad for operation of kidney stone on 23.5.1988 and he remained in the hospital till 2.6.1988. The driver of the petitioner had taken away the tanker on 25.5.1988 to Modasa. Taking the benefit of the illness of the petitioner and without giving any information, he drove away the tanker to Modasa. The petitioner was not knowing anything about the activities of his driver. Later on, he came to know that his driver Himmatkhan had taken away his tanker with 10,000 liters of kerosene to Modasa with some ulterior motive and that was found at Karn Petroleum. The Collector of Sabar Kantha checked the tanker of the petitioner at Karn Petroleum on 25.5.1988. The Collector found the tanker loaded with kerosene without any bill or required documents and hence the tanker was seized, after making panchnama etc. The petitioner was given notice dated 16.5.1990 for the forfeiture of the tanker. The petitioner had given detailed reply and made submissions before the Collector on 20.11.1990, but the Collector, without considering the evidence and material produced by the petitioner on record passed the order dated 26.4.1991 confiscating the tanker in dispute. The petitioner also filed an appeal before the State Government against the order of the Collector. The appeal was decided by the State Government and has been dismissed vide order dated 8.2.1993. Hence this petition.

3. Heard the learned counsel for the petitioner. and Mr.K.M.Parikh, learned A.G.P. for the respondents, I have carefully perused the relevant papers on record. The contentions of the learned counsel for the petitioner is that the petitioner fell ill and was hospitalized and he remained in hospital from 23.5.1988 to 2.6.1988, where the operation of the petitioner was performed. The incident of using the tanker took place on 25.5.1988. When the petitioner was in the hospital, taking benefit of the illness of the petitioner the driver had taken away the tanker to Modasa loaded with kerosene oil, which was for adulteration in petrol, and the tanker was seized by the Collector at Karn Petroleum outlet. The driver

had absconded and could not be produced before the authorities concerned to show any intention of the petitioner in the transaction. Both the authorities had erroneously rejected the evidence of the petitioner and erroneously held that the petitioner was also responsible for the offence committed holding that, he was involved indirectly in the transaction. The learned counsel for the petitioner referred to the provision of Section 61B (2) of the Essential Commodities Act; wherein it is provided that no order for confiscating can be passed under Section 6-A, if the owner of the vehicle proves to the satisfaction of the Collector that it was used for carrying essential commodities without the knowledge or connivance. As such the petitioner had sufficiently established that the petitioner was not within the knowledge of the transaction conducted by his driver in respect of the offence. As such the findings recorded by the authorities concerned are illegal and are not sustainable in the eye of law. He relied on the decision of the Supreme Court in the case of Assistant Forest Conservator and others v. Sharad Ramchandra Kale reported in (1998) I SCC 48 wherein the Supreme Court has confirmed the findings recorded by the High Court where the High Court set aside the order of confiscation on the ground that the authorities had failed to establish that the owner of the truck had any knowledge that his truck was likely to be used for carrying forest produce in contravention of the provision of the Forest Act. On the basis of this proposition laid down by the Supreme Court, the learned counsel for the petitioner contended that it was the burden on the prosecution to prove that the petitioner was involved in the transaction, in connection with the offences and that burden has been shifted by the prosecution on the petitioner. The authorities have committed jurisdictional error and this Court has power to correct the jurisdictional error committed by the authorities. I have considered the argument of the learned counsel for the petitioner. The learned counsel has relied upon the decision of the Supreme court in respect of the transaction in Forest Act whereas the present transaction is under the provision of Essential Commodities Act; wherein the burden has been shifted on the owner and that has to be proved by the owner himself to the satisfaction of the Collector that the vehicle was used without his knowledge. In the present case, both the authorities have recorded the finding that the petitioner was involved indirectly and the transaction was done in his connivance. As such the propositions laid down by the Supreme Court are not applicable in the facts and circumstances of the case. The learned counsel for the petitioner also cited the decision of this court

in the Case of State of Gujarat v. Luhana Prabhudas Vrajlal reported in (1990) II G.L.R. 1300; wherein it has been observed that the learned Additional Sessions Judge has not considered the provisions of Section 61B (2) which show that if the owner of the vehicle proves to the satisfaction of the Authorized Officer that it was used in carrying forest produce, without knowledge or connivance of the owner himself, no order confiscating any vehicle can be passed under Section 61A of the Act. The learned Additional Sessions Judge failed to look to the relevant provisions of Section 61 B of the Forest Act, while deciding the appeal. Though under Article 227 of the Constitution the scope for interference by the High Court was limited, in the case there is non-application of mind by the learned Additional Sessions Judge to the relevant provisions of the Act and it would amount to error apparent on the face of the record. Hence the High Court was entitled to interfere under Article 227 of the Constitution of India. I have also considered the said observation of this Court in the Case of State of Gujarat (Supra). It appears that the Sessions Court set aside the order of confiscation passed by the authority concerned. That order was found by this Court not in accordance with law of the provisions of the Act and it was found that the learned Additional Sessions Judge had not looked into the relevant provisions of the Act while passing the order. As in the present case, it refers to the transaction or confiscation of the tanker under the provisions of Essential Commodities Act, the observations made by this court in the Case of State of Gujarat, (Supra), are not applicable to the facts and circumstances of this case. The petitioner also relied on the decision of this court in the Case of Navinchandra K. Chavda v. Range Forest Officer and Another reported in (1993) I 948 wherein it has been observed that when the motor vehicle is used for a regular and lawful transport of goods, the driver who might be the agent or the person in charge of such vehicle might divert the vehicle for its unlawful use for carrying forest produce without the knowledge or connivance of the owner and the owner could not be said to have foreseen such an unlawful use. Can in such a case the provision be constituted so as to attribute knowledge or connivance of driver to an innocent unwary owner of the vehicle? The answer would be in the negative.

I have also considered observations made by this Court in case of Navinchandra K. Chavda (Supra). In that case, the owner could not attribute driver's knowledge or connivance in carrying forest produce. But in the present case the material filed by the petitioner

has been considered by authorities concerned and that the material so found was not acceptable. Hence this Court cannot interfere with that finding, holding that the findings recorded by the authorities concerned were not justified and that would amount to reappreciation of the evidence which cannot be done by this Court under Articles 226 and 227. As such the finding recorded by he authorities concerned on the basis of the evidence are not illegal. The Court cannot reappreciate the material on record to arrive at another finding. This Court can only examine the fact whether the authorities had jurisdiction to pass the appropriate order. In the present case the authorities had jurisdiction to consider the material on record and pass appropriate order that has been done.

4. In the last, the learned counsel for the petitioner has submitted that the tanker of the petitioner was seized and taken into custody by the Collector on 25.5.1988 and the petitioner moved the application for the release of that tanker and the authorities concerned passed the order releasing the property on furnishing the bank guarantee of Rs.1,50,000/- (Rs. One Lac Fifty Thousand Only). Later on the tanker was taken into custody and the the order has been passed confiscating the tanker of the petitioner and that has been confirmed by the Government in appeal. The Bank Guarantee deposited by the petitioner has not been permitted to be returned to the petitioner. As such the petitioner has been penalised by two modes, i.e. forfeiture of the tanker as well as refusing to return the bank guarantee when the tanker of the petitioner was released.

5. I have carefully considered the facts and circumstances of the case and the submissions made by the learned counsel for the parties. I do not find any good reason for interference. Accordingly the revision petition is dismissed. Rule is discharged with no order as to costs. However, the petitioner is at liberty to move the authorities concerned for the return of the bank guarantee which was deposited for the release of the tanker by the petitioner and if bank guarantee of Rs.1,50,000/- was furnished by the petitioner for the release of the tanker it will be returned to the petitioner. Interim order, if any, stands vacated.

18.6.2001. (Kundan Singh J.)

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